

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SEVEN

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	:	
BRANCH 4779, NATIONAL ASSOCIATION OF	:	
LETTER CARRIERS (NALC), AFL-CIO (UNITED	:	
STATES POSTAL SERVICE)	:	
	:	
Respondent	:	
	:	
and	:	
	:	Case No. 07-CB-155726
VALERIE JUNE WINIESDORFFER,	:	
an Individual,	:	
	:	
Charging Party	:	
	:	
and	:	
	:	Case No. 07-CB-156115
ELIZABETH BOSSICK,	:	
an Individual,	:	
	:	
Charging Party	:	
-----	X	

**POST-HEARING BRIEF OF RESPONDENT BRANCH 4779 OF THE NATIONAL  
ASSOCIATION OF LETTER CARRIERS, AFL-CIO**

Peter D. DeChiara  
Rebecca A. Hayes  
COHEN, WEISS AND SIMON LLP  
330 West 42<sup>nd</sup> Street  
New York, New York 10036  
(212) 356-0216

Counsel for Respondent Branch 4779 of the  
National Association of Letter Carriers, AFL-CIO

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Respondent Branch 4779 (“Branch”) of the National Association of Letter Carriers, AFL-CIO (“NALC” or the “Union”) submits this post-hearing brief in opposition to the above-captioned unfair labor practice charges.

### **PRELIMINARY STATEMENT**

The General Counsel claims that the Branch, by its agent Robert Willbanks, via text message, threatened employees with physical harm and/or refusal to represent them because they requested to resign from the union and/or because they opposed grievances raised by the Branch. The claim fails. The Board has held that determining whether a statement constitutes a threat requires an assessment of the entirety of the circumstances. The undisputed facts here make clear that the text was not a threat directed towards the charging parties, but a statement made in jest, intended to mock postal management. Moreover, Willbanks sent the text message to a small group of three fellow employees who were his old friends and with whom he had a long practice of exchanging joking texts. He had no intention, and no reasonable expectation, that the two charging parties, or anyone else for that matter, would ever see it. In addition, nothing in the text, or anything else in the record, contains the slightest hint that the Branch, as the General Counsel alleges, threatened employees with physical harm and/or a refusal to represent them. Finally, Willbanks sent the text in his capacity as a letter carrier and a friend, rather than a union representative, and therefore the text cannot be attributed to the Branch. For these reasons, as more fully explained below, the complaint is meritless and should be dismissed.

### **FACTS**

#### **NALC and USPS**

NALC serves as the collective bargaining representative under the National Labor Relations Act (the “Act”) of a nationwide bargaining unit of city letter carriers employed by the United States Postal Service (“USPS”). *See* October 26, 2015 Order Consolidating Cases,

Consolidated Complaint and Notice of Hearing (“Complaint”) at ¶6; Respondents’ December 31, 2015 amended answer (“Amended Answer”) at ¶6. At all material times, USPS and NALC have been party to a collective bargaining agreement (the “National Agreement”) governing the terms and conditions of employment of the city letter carriers. *See* Jt. Ex. 1; Complaint ¶6; Amended Answer ¶6.

The Branch has at all material times been an agent of NALC that administers the National Agreement at the lower levels of the grievance procedure for city letter carriers employed in Allen Park, Michigan. *See* Complaint ¶6; Answer ¶6.

Willbanks is a letter carrier in Allen Park, Michigan. He has been employed by USPS since 1987 and has been a Branch officer since 1995. *See* Tr. 49. He has been the president of the Branch for the last ten years. *Id.*

#### Group Texts Mocking Management

Willbanks testified that he frequently exchanges text messages on his personal cell phone with fellow letter carriers from the Allen Park station Alan Wilson, Kris Shaw, and Mark Tocco. Willbanks has worked with and known all three men for approximately twenty years and considers each a good friend. *See* Tr. 51-52. The four men regularly send each other group texts regarding personal matters as well as banter about work. *See* Tr. 52.

Dissatisfaction with management is a frequent topic of these group texts. The long running joke between Willbanks and these friends is to text a caricature of the professional wrestling manager, Paul Bearer, to represent the Allen Park Postmaster, Mark Taurence, with a joking message underneath purporting to be from Taurence. *See* Tr. 54-55, 88; R. Ex. 1-5, 7. The messages attributed to the Postmaster are always fabricated and are intentionally hyperbolic in their level of vitriol. The message will often include a disparaging comment about, for example, the “meddling [U]nion” or the “thieving scumbag... [letter] carriers.” *See* R. Ex. 1, 3.

Shaw, one of the four men in the group texts, is a common “butt of [the] jokes.” *See* Tr. 58. The messages in the Postmaster’s voice make unreasonable demands of Shaw that he do ever more work, regardless of the volume of mail or whether he is injured. *See* R. Ex. 2, 4- 5; Tr. 58. The four men sharing the group texts understand that these messages are not meant as threats to Shaw. *See* Tr. 58. The messages are sent in jest, and are meant to poke fun at management.

#### June 12, 2015 Conversation Between Bossick and Willbanks

Charging party Elizabeth Bossick is a letter carrier and a member of Branch 4779. *See* Tr. 16. She has worked at the Allen Park post office since February 2013. *Id.* Bossick occasionally serves as a temporary supervisor. *Id.*

Bossick was acting as a temporary supervisor on Friday, June 12, 2015. *See* Tr. 17. Willbanks delivered mail on Bossick’s regular route that day. A customer on Bossick’s route commented on her absence, and Willbanks assured the customer that Bossick would return to her route the following Monday. *See* Tr. 18, 50. Upon returning to the post office after finishing his deliveries that day, Willbanks told Bossick about his exchange with her customer. *Id.* Bossick responded that she was “happy to go back to [her] route” and commented that her customers are “all really nice.” *See* Tr. 17-18.

Bossick then asked Willbanks how she could resign from NALC. *See* Tr. 20. Willbanks responded without the slightest malice or animus. It is undisputed that he simply provided her what information he had, telling her that she “would have to find out her anniversary date,” or the date on which she joined the union, and that she “could find out by looking in the postal record and calling” to inquire. *Id.* Nothing in the exchange suggested that Willbanks intended to retaliate against her.

#### June 13, 2015 Text Exchange Between Daniel Szkarlat and Willbanks

Jim Long is a letter carrier in the Allen Park station. *See* Tr. 65. He began work there within one month of Bossick's start date. *See* Tr. 70. Long was a good carrier, but he suffered an on-the-job injury which curtailed his ability to work. *See* Tr. 68. After the injury, the Postmaster "turned on" Long and their relationship became "adversarial." *See* Tr. 68, 70.

As a result of his injury, Long filed an application for workers' compensation benefits. *See* Tr. 68. As part of his role as Branch president, Willbanks assists bargaining unit members in getting their workers' compensation claims approved. *See* Tr. 69. Willbanks learned that Long had approached Daniel Szkarlat, the Branch vice president and chief steward, to discuss the details of his case. *See* Tr. 68-69. On June 13, 2015, Willbanks sent a text message to Szkarlat asking him to "[t]ell Jim Long[] [to] [a]sk to see me on Monday. Maybe I can help get his case approved." *See* R. Ex. 6; Tr. 69. The following Monday was June 15, 2015.

#### Willbanks' June 15, 2015 Joke Text to Wilson, Shaw, and Tocco

On June 15, 2015, Willbanks sent a text (the "June 15 Text") from his personal cell phone to the same group of three co-workers he regularly jokes with, Wilson, Shaw, and Tocco. This text followed the same pattern as previous texts sent to the group. The message included a caricature of Paul Bearer, which the recipients understood to represent the Postmaster, and words below the caricature which the recipients understood was a fabricated quote purportedly from the Postmaster. *See* Tr. 54-65, 72-74, 88-92.

Below the picture of Paul Bearer, the text message read: "Beth, you are one major illness or injury[] [f]rom being in my dog-house. You see how petty I am. I will come after you too." *See* GC Ex. 4.

Willbanks, anticipating a meeting with Long that day, sent the June 15 Text with Long's workers' compensation case in mind. The "Beth" referenced in the text message is



Bossick. *See* Tr. 75. The joke was that the Postmaster was so petty that if Bossick, another good carrier, suffered an illness or injury, he would be upset with her and “come after” her in some way, much as he had with Long. The text was not intended to suggest that Willbanks himself, or the Branch, would “come after” Bossick. The text said nothing about physical harm to, or a refusal to represent, either Bossick or anyone else.

None of the recipients responded to the June 15 Text. It was just another joke in a series of joke texts shared among the friends. The next message in the group text, which was unrelated to the June 15 Text, Tr. 75, 92, was another joke in a similar format, this time from Shaw. *See* R. Ex. 7. He sent a caricature that the recipients understood to be of another letter carrier, with a fabricated message from her stating that she “used [her] one phone call to call” in sick, which she was known to do frequently. *See* Tr. 75, 92; R. Ex. 7.

#### Wilson Forwards Willbanks’ June 15 Text to Bossick

Willbanks did not send the June 15 Text to Bossick, nor did he expect or intend for her – or anyone else other than those to whom he sent it – to ever see it. *See* Tr. 74. Willbanks had Bossick’s phone number and could have contacted her directly had he intended to do so. *Id.*

Unbeknownst to Willbanks, Wilson, who was not an officer, representative or agent of the Branch, forwarded the June 15 Text to Bossick. *See* Tr. 21-22. Willbanks did not intend for Wilson to forward the text, nor did he expect that he would. To Willbanks’ knowledge, neither Wilson, nor any of the other recipients on the group texts, had ever before forwarded texts he sent to them to anyone else, or even discussed the texts with anyone. *See* Tr. 59, 61, 63, 65, 74; 89, 91-92.

Wilson did not provide Bossick any context for interpreting the June 15 Text, explaining only that he was forwarding a text from “Willy”, meaning Willbanks. *See* GC Ex. 3;

Tr. 22-24. Bossick had never before seen the caricature the four men used to represent the Postmaster. *See* Tr. 23. She testified that her initial reaction was “surprise[]” and that she originally believed, mistakenly, that the caricature was meant to represent Willbanks. *See* Tr. 25, 38.

#### Bossick Forwards Willbanks’ June 15 Text to Winiesdorffer

Willbanks did not send the text to Winiesdorffer, nor did he expect or intend for her to see the message. *See* Tr. 74. Willbanks had Winiesdorffer’s phone number and could have contacted her directly had he intended to do so. *Id.*

On June 15, 2015, unbeknownst to Willbanks, Bossick, who was neither a representative nor agent of the Branch, forwarded Willbanks’ June 15 Text to Winiesdorffer, a fellow letter carrier in Allen Park. *See* Tr. 16.

Prior to June 15, 2015, Winiesdorffer held a negative opinion of Willbanks as president of Branch 4779. She had previously filed a series of internal union charges accusing Willbanks of misconduct and corruption. *See* Tr. 45. Winiesdorffer admitted at the hearing that she wanted to see Willbanks removed from his position as Branch president. *See* Tr. 47.

Like Bossick, Winiesdorffer had never seen the caricature of the Postmaster before, and lacked any context for interpreting the June 15 Text. *See* Tr. 42. Nevertheless, Winiesdorffer, seeing an opportunity to attack Willbanks, called Bossick and told Bossick that the text was a threat. *See* Tr. 26. Tellingly, although Bossick is the one named in the text and the one who received it first, it was Winiesdorffer who first filed a ULP charge over the matter. *See* GC Ex. 1(a).

#### Bossick Calls NALC Business Agent Patrick Carroll Regarding the June 15, 2015 Text

At some time after June 15, 2015, Bossick called NALC National Business Agent Pat Carroll regarding the June 15 Text. *See* Tr. 32-33. Carroll subsequently spoke to Willbanks

about Bossick's concerns. Carroll concluded that “it was schoolyard play and wasn’t meant for [Bossick] to see.” *See* Tr. 34.

Bossick never requested that Carroll take any further action regarding the June 15 Text.

#### CCA Grievance

On May 7, 2015 and on June 27, 2015, Willbanks filed two related grievances (the “Grievances”) challenging Postmaster Taurence’s practice of “borrowing” a City Carrier Assistant (“CCA”) from another station to carry mail on a daily basis, rather than using letter carriers from Allen Park. *See* Tr. 77. Branch members had expressed concern to Willbanks that this practice was reducing the number of hours of available overtime. *See* Tr. 78. The National Agreement states that USPS management may borrow CCA’s from other stations “occasionally.” *See* Tr. 77. Willbanks filed the Grievances based on his belief that using the CCA daily, rather than “occasionally,” violated the National Agreement. The remedy he sought was payment at the overtime rate to those letter carriers who were on the “Overtime Desired List” who received fewer overtime hours due to the Postmaster’s use of the CCA. *See* Tr. 78. As Willbanks explained, the June 15 Text had nothing to do with these Grievances. *See* Tr. 79.

#### The ULP Charges

On July 8, 2015, Winiesdorffer filed her unfair labor practice charge, 7-CB-155726, claiming, *inter alia*, that Willbanks sent a threatening text about a co-worker. *See* GC Ex. 1(a).

On July 16, 2015, Bossick filed her unfair labor practice charge, 7-CB-156115, claiming that the Branch committed an unfair labor practice through “[t]hreatening texts, and discrimination against me personally which results in bias[ed] representation.” *See* GC Ex. 1(e).

On September 23, 2015, Winiesdorffer filed an amended charge in Case 7-CB-155726, alleging that “the Union disseminated to unit employees a discriminatory and threatening text message and has been attempting to isolate unit members for arbitrary and discriminatory reasons.” *See* GC Ex. 1(i).

### The Complaint

The General Counsel’s complaint asserts that the Branch violated Section 8(b)(1)(A) of the Act. *See* GC Ex. 1(m) at ¶8. The complaint alleges that the Branch, “by its agent Robert Willbanks, via text message, threatened employees with physical harm and/or refusal to represent them, because they requested to resign from [the National Association of Letter Carriers, Branch 4779], and/or because they opposed grievances raised by” the Branch. *See id.* ¶7.

As explained below, the claims lack merit and should be dismissed.

### **ARGUMENT: THE GENERAL COUNSEL FAILED TO ESTABLISH THAT THE BRANCH VIOLATED SECTION 8(b)(1)(A)**

#### **I. The General Counsel Failed To Prove that Willbanks’ June 15 Text Was a Threat**

The record fails to support the General Counsel’s allegations that Willbanks threatened employees through the June 15 Text. Section 8(b)(1)(A) makes it an unfair labor practice for a union to “to restrain or coerce” “employees in the exercise of the rights guaranteed” by the Act. “The test of whether a statement would reasonably tend to coerce an employee in the exercise of protected concerted activities is an objective one, requiring an assessment of *all the circumstances in which the statement is made.*” *Int’l Bhd. of Elec. Workers, Local 6, AFL-CIO*, 318 NLRB 109 (1995) (emphasis added).

**A. The June 15 Text Was A Joke, Aimed at Management**

A statement does not violate the Act when made under circumstances which indicate that the speaker was joking. *See La-Z-Boy*, 281 NLRB 338 (1986). For example, in *La-Z-Boy*, the Board upheld an administrative law judge's finding that statements by management about transferring an employee who had inquired about benefits, including an offer to "help him pack," did not violate the Act, when they were "made in jest" in an "informal" "gripe session[]" in which "a lot of kidding ... [was] ... normally done." *Id.* at 342. The Board held that, "under all the circumstances, the comments would not reasonably have been viewed as threats and hence do not" violate the Act. *Id.* at 338 n.2 (1986); *see also Manorcure of Kingston Pa, LLC & Laborers Int'l Union of N. Am. Local 1310*, 360 NLRB No. 93 at \*2 (Apr. 29, 2014) (finding that third-party comments "made in a joking and casual manner" were not threats).

Further, "statements which were not threats when made," do "not, through the repetition by others, become transformed into objectionable conduct." *Manorcure*, 360 NLRB No. 93 at \*2. In *Manorcure*, the Board refused to sustain an objection to an election based on an employee's alleged threat to "start punching people in the face" if the union did not win, and similar threats to damage cars and cause bodily harm, when they were made in a "casual and even light-hearted fashion." *Id.* The statements were subsequently circulated "by other employees not in the presence of the speakers... stripped of their original context," in what was "essentially... a version of the 'game of telephone.'" *Id.* The Board determined that setting aside an election on these grounds would "encourage false attributions in order to influence election outcomes." *Id.*

These Board decisions make clear that Willbanks' June 15 Text cannot be construed as a threat to unit employees. There is no dispute that his text followed the joking pattern of messages sent between him, Wilson, Shaw, and Tocco with a caricature of Paul Bearer

representing Postmaster Taurence and a fabricated quote in the Postmaster's voice below. The text was sent only to these three men, all of whom were close friends and longtime co-workers, and all of whom were familiar with the reference. The text was not only a joke, but a joke mocking management. This is the context in which the message must be understood.

Willbanks' text was not transformed into a threat when it was unexpectedly forwarded, and then mischaracterized, without the benefit of context. Winiesdorffer, the person who first claimed the June 15 Text was a threat, Tr. 46, was a political enemy of Willbanks with an axe to grind. Winiesdorffer, who admitted at the hearing that she "wanted to see Willbanks gone," Tr. 47, had every incentive to misconstrue the text and use it as ammunition in her campaign against him. A finding that the June 15 Text was a threat would only serve to "encourage false attributions," *Manorcare*, 360 NLRB No. 93 at \*2, and allow the Board to be used to serve as a means to score points in internal union political battles.

Because the June 15 Text was a joke, it cannot reasonably be deemed a threat in violation of Section 8(b)(1)(A).

**B. The Text Cannot Be Deemed A Threat Because Willbanks Had No Reasonable Expectation that either Bossick or Winiesdorffer Would Ever See It**

The complaint against the Branch also fails because Willbanks had no intention or reasonable expectation that Bossick or Winiesdorffer, or anyone else other than the small group of friends to whom he sent the June 15 Text, would ever see it.

A threat, by definition, must be "communicated" to those threatened. *See* Black's Law Dictionary (10th ed. 2014) (defining threat as a "*communicated* intent to inflict harm or loss on another or on another's property") (emphasis added). In typical threat cases, the alleged threat is directly communicated to the threatened party, or "disseminated widely among bargaining unit members." *Battle Creek Health Sys. & Local 79, Serv. Employees Int'l Union, AFL-CIO*, 341

NLRB 882, 892 (2004); *see also Kurz-Hastings, Inc.*, 344 NLRB 644, 655 (2005); *Laborers Local 806*, 295 NLRB 941 (1989). When an alleged threat is not directly communicated or widely disseminated, the Board looks to whether the employees “may reasonably be expected to learn of it.” *Masters, Mates & Pilots (Marine Transp.)*, 301 NLRB 526, 562 (1991) (emphasis added) (citing *Retail Wholesale Union*, 133 NLRB 1555, 1566 (1961); *Furniture Workers (Brooklyn Spring)*, 113 NLRB 815, 822 (1955), *enf’d.*, 233 F.2d 539 (2d Cir. 1956); *Bartenders Local 2 (Zim’s Restaurants)*, 240 NLRB 757 (1979)). Even if not directed at an employee, violent acts or threatening statements made “where statutory employees were in the vicinity” are actionable because they can be interpreted by employees as a warning. *Marine Transp.*, 301 NLRB at 562. Conversely, a statement that is neither directly communicated to employees nor made under circumstances in which employees could hear, or would likely learn of it, does not violate the Act.

Here, Willbanks sent the June 15 Text from his personal cell phone to three close friends with the expectation that it would be seen only by the intended recipients. Willbanks did not directly communicate the June 15 Text to either of the charging parties. Without Willbanks’ knowledge or consent, Wilson, acting on his own and not as an agent of the Branch, forwarded the June 15 Text to Bossick, who then forwarded the text to Winiesdorffer. Willbanks had absolutely no reason to expect this would happen. To Willbanks’ knowledge, none of the other texts he, Wilson, Shaw, or Tocco have exchanged amongst themselves have ever been forward or shown to anyone else. *See* Tr. 59; 61, 63, 65, 89, 91-92. Thus, based on his past experience, he had no reasonable expectation that either of the charging parties would ever learn of the June 15 Text.

That Willbanks had no reasonable expectation that the charging parties or other unit employees would ever see the June 15 Text constitutes another fatal shortcoming in the General Counsel's case.

**II. The General Counsel Failed to Prove that the Branch Threatened Employees with Physical Harm or Refused to Represent Them**

In addition, the General Counsel failed to support the Complaint's specific contentions that the Branch, through the June 15 Text, threatened employees with "physical harm and/or refusal to represent them." *See* Complaint ¶7. Nothing in the June 15 Text constitutes a threat of physical harm. The phrase "I will come after you too," on its face, is not a threat of bodily harm. It is unspecific and "somewhat obscure." *Nat'l Ass'n of Letter Carriers, Local 3825*, 333 NLRB 343, 343-44 (2001) (Board finding no threat of retaliation in union newsletter article that referred to a unit member as a "scab-ass" and criticized two union members for cooperating with an employer's disciplinary investigation, and finding phrase in union article "what goes around comes around" to be "somewhat obscure.>"). The June 15 Text also makes no reference at all to representation matters. The General Counsel presented no evidence at the hearing which would support a reading of the text as threatening a refusal to represent employees. Because the General Counsel failed to substantiate the allegations in the complaint, the Complaint should be dismissed.

**III. The General Counsel Failed to Establish that Willbanks was Acting in his Role as a Union Representative When He Sent the June 15 Text**

Finally, the General Counsel's complaint fails for want of proof that when Willbanks sent the June 15 Text, he was acting in his capacity as a union officer. Willbanks sent the text in his individual capacity as an employee and as a friend. The text was a private, personal communication sent to three longtime colleagues from his personal cell phone. The June 15 text is not related to representation of unit employees or union matters of any kind.




Although Willbanks occasionally used his personal cell phone for communications concerning the Branch, that fact does not transform all his communications sent from that phone into union business. No evidence was presented to suggest that Willbanks had another phone on which to send private texts in order to keep his communications separate.

In sum, General Counsel failed to prove his claim that the Branch violated Section 8(b)(1)(A) by threatening employees with physical harm and/or refusal to represent them.

### **CONCLUSION**

For the foregoing reasons, the complaint is without merit and should be dismissed.

Dated: New York, New York  
February 26, 2016

  
PETER D. DECHIARA  
REBECCA A. HAYES  
COHEN, WEISS AND SIMON LLP  
330 West 42nd Street  
New York, NY 10036-6976  
212-563-4100

Counsel for Respondent Branch 4779 of  
the National Association of Letter Carriers,  
AFL-CIO

## **CERTIFICATE OF SERVICE**

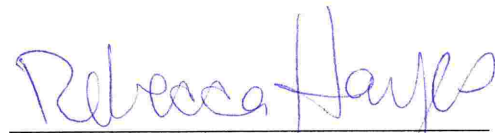
I hereby certify that I caused a copy of the foregoing brief to be served this 26<sup>th</sup>  
day of February 2016 by e-mail upon:

Donna Nixon, Esq.  
Counsel for the General Counsel  
National Labor Relations Board  
477 Michigan Ave Room 300  
Detroit, MI 48226

I hereby certify that I caused a copy of the foregoing brief to be served this 26<sup>th</sup>  
day of February 2016 by e-mail first-class mail, postage prepaid, upon:

Terry Morgan  
Regional Director  
National Labor Relations Board  
Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, MI 48226

Roderick D. Eves  
Deputy Managing Counsel  
United States Postal Service  
1720 Market Street, Rm. 2400  
Saint Louis, MO 63155-9948

  
Rebecca A. Hayes